

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

CHARLES LYONS,)	
)	
Plaintiff,)	
)	
v.)	CIVIL CASE NO. 1:20-cv-35-ECM
)	(WO)
CITY OF DOTHAN, <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM OPINION and O R D E R

On December 4, 2020, the Court, without objection, adopted the Recommendation of the Magistrate Judge, and dismissed this case. (Doc. 15). The Court also entered Final Judgment in favor of the Defendants. (Doc. 16). The Plaintiff had until January 4, 2021, to file a notice of appeal. Fed. R. App. P. 4(a)(4)(A)(i).

On December 2, 2021, the Plaintiff filed a notice of appeal (doc. 19), a motion for an extension of time to file an appeal (doc. 17) and a motion for leave to appeal *in forma pauperis* (doc. 18). Pursuant to Fed. R. App. P. 4(a)(5)(A)(i), the Plaintiff may seek an extension of time to file an appeal provided that the “party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires.” *Id.* The Plaintiff did not file his motion for an extension of time within the time allowed by Rule 4(a)(5)(A), and, thus, is untimely.

Because the Plaintiff contends that he “did not receive notice by mail of the case being dismissed,” (doc. 17 at 3), the Court considers whether to reopen the time for appeal pursuant to Rule 4(a)(6). The Rule provides that the Court “may reopen the time to file an

appeal for a period of 14 days” provided three conditions are met. First, the Court must find that the Plaintiff did not receive notice of the entry of final judgment. Fed. R. App. P. 4(a)(6)(A). Assuming without deciding that the Plaintiff did not receive notice, he cannot meet the second condition—that the motion was filed within 180 days of entry of judgment or within 14 days of receiving notice, “*whichever is earlier.*” Fed. R. App. P. 4(a)(6)(B) (emphasis added). Even if the Plaintiff only recently discovered that final judgment had been entered, the Plaintiff’s motion for an extension of time to file an appeal was filed 363 days after final judgment was entered, long after the time to reopen had expired. Finally, the Court concludes that the Defendants would be unduly prejudiced by allowing an appeal at this late date.

Accordingly, for the reason as stated and for good cause, it is

ORDERED that the Plaintiff’s motion for extension of time to file appeal (doc. 17) and motion for leave to appeal *in forma pauperis* (doc. 18) are DENIED. It is further

ORDERED that the notice of appeal received on December 2, 2021 (doc. 19) is deemed untimely.

Done this 14th day of December, 2021.

/s/ Emily C. Marks
EMILY C. MARKS
CHIEF UNITED STATES DISTRICT JUDGE